
UTAH LABOR COMMISSION

KURT CLAYTON,

Petitioner,

vs.

**NUCOR CORPORATION and
EMPLOYERS INSURANCE
COMPANY OF WAUSAU,**

Respondents.

**ORDER DENYING
APPROVAL
OF SETTLEMENT**

Nucor Corporation and its insurance carrier, Employers Insurance of Wausau, (referred to jointly as "Nucor") and Kurt Clayton ask the Utah Labor Commission to review Administrative Law Judge Holley's denial of the parties' proposed settlement of Mr. Clayton's claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND

Mr. Clayton tore the medial meniscus of his left knee while working for Nucor on May 13, 1997. He underwent arthroscopic surgery and physical therapy, and then returned to work. Mr. Clayton remains employed at Nucor but recently transferred to one of its facilities in Ohio.

In 2006 Mr. Clayton was diagnosed with left-knee arthritis caused by the 1997 work accident. This condition has been treated with injections and a brace but will eventually require knee replacement surgery. It is not known when the surgery will be required or how much it will cost.

In the proposed settlement, Nucor agrees to pay Mr. Clayton \$32,000 in return for Mr. Clayton's release of Nucor from all future workers' compensation liability for the subject injury, including liability for the future knee replacement surgery. Judge Holley declined to approve the proposed settlement. The parties now ask the Labor Commission to reverse Judge Holley's decision and approve the settlement.

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DISCUSSION

The Utah Workers' Compensation Act provides various benefits to employees injured in work-related accidents. Among those benefits is the requirement of § 34A-2-418 that the employer or its insurance carrier pay the reasonable expenses of medical care necessary to treat work injuries. Thus, pursuant to § 34A-2-418, Nucor is liable for the cost of medical care necessary to treat Mr. Clayton's knee injury, now and in the future.¹ Section 34A-2-420 of the Act requires Commission approval of any agreement to compromise or commute this liability.

Nucor and Mr. Clayton propose to commute Nucor's future workers' compensation liability in this case for a lump-sum payment of \$32,000. In considering whether to approve the proposed commutation, the Commission must first conclude that the agreement satisfies the underlying purposes of the workers' compensation system by: 1) providing the injured worker with a reasonable equivalent to the benefits otherwise provided by the Act; and 2) avoiding inappropriate shifting of costs outside the workers' compensation system.

The Commission notes that Mr. Clayton has already undergone arthroscopic surgery and is receiving other medical care. Relatively expensive knee replacement surgery will be required at some uncertain date in the future. The parties acknowledge in their agreement that "[i]t is not possible to accurately predict what future medical treatment will be required, the date that they will be required and the cost that will be incurred at that time." The parties also acknowledge that "Mr. Clayton is taking a risk that the future cost of his medical care will exceed the current lump sum he receives"

The Utah Workers' Compensation Act was intended to avoid this kind of uncertainty by assuring payment through insurance provided by employers. In the present case, the extent and expense of Mr. Clayton's future medical care is unpredictable. Furthermore, under the proposed commutation agreement, Mr. Clayton's ability to pay for that care will depend on prudent investment of the lump-sum payment and the ability to preserve that payment from use for other needs and temptations. When all these uncertainties are considered, the Commission finds a substantial risk that Mr. Clayton may be left with too little to pay for his needed medical care. In such an eventuality, Mr. Clayton would be forced to either go without treatment or shift the cost of treatment to other sources. The parties have not identified any countervailing benefits from the settlement that would outweigh the foregoing risk.

¹ Pursuant to § 34A-2-417 (1) of the Utah Workers' Compensation Act and its predecessor statute in effect during the years between July 1988 through April 2007, an injured worker's entitlement to workers' compensation medical benefits for an injury occurring during those years is terminated if, for three years or more, the injured worker fails to: 1) incur expenses for medical care of the injury; **and**, 2) submit those expenses to the employer or its insurance carrier for payment.

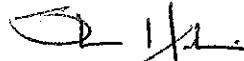
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In summary, the Commission concludes that the proposed commutation agreement has not been shown to be consistent with the underlying purposes of the Utah Workers' Compensation Act. On that basis, the Commission declines to approve the proposed agreement.

ORDER

The Commission concurs with Judge Holley's judgment in this matter and declines to approve the parties' proposed commutation agreement. It is so ordered.

Dated this 11th day of February, 2010



Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.